IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3674 OF 2005
IN
SUIT NO.3117 OF 2005

Anubhai K. Shah ....Plaintiff
V/s.
Ajinkyata Sahakari Sakhar .
Karkhana Ltd. ....Defendant

Mr.Jayesh Bhatt for the Plaintiff.
Mr.Atul Rajadhyaksha i/b Mr.N.U. Gangae for Defendant No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 10TH SEPTEMBER, 2007.

P.C. :

1. The Plaintiff has taken out this Notice of Motion for a decree on admission.

2. The suit is filed to recover a sum of Rs.1,22,30,751=38 ps together with interest.

3. The application for a decree on admission is based on the second sentence of paragraph 3 of the Defendants letter dated 2.7.2005 addressed to the Plaintiff. I will however extract the entire paragraph which reads as under :-

> "3. We deny the contents of the para 3 of your said Notice.

> The true facts are that in the factory's goods purchase and sale account f Rs.51,55,634.57 ps. is the only amount appearing as balance payable to your client M/s.Shanti Automobiles. However there is difference between your claim on behalf of your client and factory goods purchase and sale Account. Therefore you please ask your clients M/s.Shanti Automobiles to attend factory's account office to verify Account and help in arriving at correct figure. Unless and until the verification of account is done your clients would not know the final outcome and we request you that unless the accounts are verified and settled personally till then you should not proceed against the factory.
>
> Once again I request you that you ask your client to visit the accounts department of factory for verification and settlement.They will be allowed to verify and settle the accounts during the office hours except office holidays and Sundays.
>
> Thus, they should be asked to remain present with their records. Replied as above to your Notice."

4. The Plaintiff relies only upon the second sentence in paragraph 3. As far as the remaining portion is concerned, the Plaintiff contend that it merely refers to the dispute between the parties pertaining to the difference in the sums of Rs.51,55,043=03 ps. and Rs.88,35,634=57 ps. In other words according to the Plaintiff a sum of Rs.51,55,043=03 ps. is admitted by the Defendant.

5. I do not suggest that there is no substance in the Plaintiff's contention . However, for a decree on admission, it is necessary that the admission should be clear and unequivocal. This the above admission is not. The second sentence must be read in the context of the entire letter. So read it is possible, as contended by Mr.Rajadhyaksha, the learned counsel appearing on behalf of the Defendant that the remaining paragraph indicates that there were further difference between the parties pertaining to the accounts in general.

6. It is admitted that pursuant to the letter, Plaintiff's officers did attend the Defendant's office. Nothing materialized necessiting the Plaintiff filing the present suit. It is also clear that there is a serious disputes regarding a sum of Rs.17,00,000/- having allegedly been paid by the Defendant to the Plaintiff. This has been alleged not only in the affidavit in support but even prior thereto.

7. Moreover a question of law also arises under Section 164 of the Maharashtra Co-operative Societies Act. It is not necessary for me to deal with the contention in this Notice of Motion in view of the

above finding.

the Notice of Motion is therefore dismissed.